

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-211247

DATE: April 12, 1983

MATTER OF: Honeywell, Inc.

DIGEST:

1. Protest that procurement for maintenance services to be performed on energy management system should not be set aside for small business concerns because the protester, a large business and the manufacturer of the energy management system, could best perform the maintenance services is dismissed. Protest does not involve any allegation that adequate small business competition is not available or that the contracting agency abused its discretion in this regard.
2. GAO will not object to a contracting agency's determination that less restrictive specifications will meet its minimum needs. Protest therefore is dismissed.
3. Protest alleging that award of contract for maintenance services contract to any other firm may violate software rights protester has under contract with contracting agency is dismissed because it either is a matter of contract administration or involves potential patent infringement, matters which are not appropriate for review under our bid protest function.

Honeywell, Inc., protests award of a contract to any other firm under solicitation No. F742132145-0123-0128, issued by the Department of the Air Force, for maintenance services required in connection with an energy management system procured from Honeywell. Honeywell contends that the Air Force should not have set aside the procurement for exclusive small business participation because doing so precludes Honeywell, manufacturer of the energy management system, from competing for the maintenance contract. Honeywell also alleges that, after Honeywell informed the

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contracting officer that only Honeywell could meet certain requirements in the solicitation specifications, the contracting officer deleted those sections of the specifications so as to allow other, less qualified firms to compete. Finally, Honeywell contends that allowing any other firm to maintain the system will threaten certain software rights Honeywell has under its agreement with the Air Force.

We dismiss the protest.

Federal Procurement Regulations § 1-1.706-5(a) (1964 ed., amend. 192) provides that procurements shall be set aside for small business concerns if there is a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that award will be made at a reasonable price. The decision as to whether such an expectation exists is basically a business judgment within the broad discretion of contracting officials; accordingly, our review of challenges to set-aside decisions is generally limited to ascertaining whether there has been an abuse of that broad discretion. See, e.g., Burrelle's Press Clipping Service, B-199945, March 2, 1981, 81-1 CPD 152; see also Ingersoll-Rand, B-207005, April 12, 1982, 82-1 CPD 338.

The protester does not allege that adequate small business competition is not available. Rather, the protester contends that, as the manufacturer of the system, it should not be excluded from competing for the maintenance services contract. The protester believes that the agency's decision to set aside this procurement is unwise because the protester is best qualified to perform these services and because maintenance of the Honeywell system by another firm might damage Honeywell's reputation. While Honeywell disagrees with the Air Force's approach to fulfilling its maintenance needs, this does not provide a proper basis upon which to maintain a protest under our Bid Protest Procedures (4 C.F.R. part 21 (1983)), and we find no evidence that the contracting agency abused its discretion in setting aside this procurement. See Ingersoll-Rand, supra.

Regarding Honeywell's contention that the contracting officer deleted certain specifications upon being informed that only Honeywell could meet them, we have long recognized

that it is the contracting agency's responsibility to determine its actual needs, and we will not question an agency's determination that less restrictive specifications will meet its needs. Honeywell, Inc., B-205093, March 16, 1982, 82-1 CPD 248.

Finally, concerning Honeywell's charge that its software rights under an "agreement" with the Air Force may be violated if a business concern other than Honeywell maintains this system, it appears that the software rights to which Honeywell refers are part of the contract under which it sold this energy management system to the Air Force. As such, Honeywell's rights and any violation of those rights are matters of contract administration to be resolved under the provisions of Honeywell's contract with the Air Force and are not for review as part of our bid protest function. See McDonough Construction Company, B-189157, June 7, 1977, 77-1 CPD 409. On the other hand, if Honeywell is referring to rights it may have under patents it holds, a protest that patent or license infringement may result from performance under a contract awarded to another firm is not for consideration by our Office either. See Environmental Container Systems, Inc., B-201739, February 9, 1981, 81-1 CPD 83.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel